IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

Crl.Rev.Pet.No. 2420 of 2007()

CC.133/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, PONNANI

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REVN. PETITIONER:

1. PARAMESHWARAN EZHUTHACHAN,AGED 78YEARS
   S/O.THACHU EZHUTHACHAN,KARUMARATHODI HOUSE,
   P.O KUMARANELLOOR,PALAKKAD.

2. MURALI,S/O.PARAMESHWARAN EZHUTHACHAN,
   KARUMARATHODI HOUSE,P.O KUMARANELLOOR,
   PALAKKAD.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM,REPRESENTING DEPUTY SUPDT. OF POLICE,
TIRUR.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL. R.P. NO. 2420 OF 2007

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Dated this the 19th day of October, 2007.

ORDER

In this revision filed under Section 397 and 401 of Cr.P.C, the revision petitioners, who are accused Nos.1 and 2 in Crime No.268/2002 of Changaramkulam Police Station for an offence punishable under Section 498 A r/w Section 34 of the Indian Penal Code, seek to set aside the order dated 01.03.2007 passed by the Judicial First Class Magistrate, Ponnani in C.C. No.133/2004 framing charge against the revision petitioners for the aforementioned offence.

2. After hearing the learned counsel for the revision petitioner and the learned Public Prosecutor and after perusing the records including the police charge as well as the court charge, I am of the view that it will be an abuse of process of court to compel the petitioners to undergo the trauma of a trial on the admitted facts.

3. The case of the prosecution itself as follows:-

26 year old Latha was maried by the 2nd accused Murali as

per the Hindu customary rites on 26.10.1998. After the marriage, she was residing in her matrimonial house at Vattamkulam Desom along with her husband (A2) and father-in-law(A1). Her husband (A2) was at that time employed abroad. Some time in the year 2001, he came back to his native place consequent on the cancellation of his visa and was residing at Bombay along with the parents of his wife Latha. Latha was employed as a teacher in Darul Hidaya Private School at Edappal. While so, she developed an illicit intimacy with a teacher of the very same school. On 01.08.2002 a letter written by Latha exceeding the limits of morality happened to come into the hands of her father-in-law, the 1st accused. He thereupon restrained Latha from going to school. He informed the matter to his son, the 2nd accused who is the husband of Latha. The 2nd accused scolded Latha over the telephone. On account of the mental agony inflicted by the 2 accused persons, Latha who was disappointed in life committed suicide at about 5.30 p.m. on 04.08.2002 by pouring kerosene on her body and set herself ablaze. On account of the extensive burns sustained by Latha,

she succumbed to the injuries on the same day. The accused have thereby committed an offence punishable under Section 498 A r/w Section 34 IPC.

4. The short question which comes up for consideration in this revision is as to whether the above conduct attributed to the accused amounts to "cruelty" within the meaning of Section 498 A IPC. For the purpose of Section 498 A the explanation thereto defines expression "cruelty" to mean-

a. any wilful conduct which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or

b. harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

5. The persons who are sought to be made liable for the said cruelty are the husband or the relative of the husband of such woman. The prosecution has no case that the cruelty in this case was one falling under clause (b) of the explanation referred to above. If so, the cruelty should fall under Clause (a) which

envisages "wilful conduct" which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman concerned. Even according to prosecution, the deceased Latha was going astray from the path of rectitude and was guilty of matrimonial infidelity by developing an illicit relationship with a co-worker of hers. The letter allegedly written by her and intended to be handed over to her paramour and which has been produced along with this revision as Annexure B, shows that she had exceeded the limits of morality. Any father-in-lay who chanced to stumble upon such a letter written by his daughter-in-law would be agitated and the conduct of A1 also was no way different. The only conduct attributed to him is that he asked his daughter-in-law not to go to school any more. He also informed his son about the conduct of his daughter-in-law. The husband's reaction also was quite natural. On coming to know of the extra-marital affair contracted by his wife, he scolded her through the telephone and asked her to stop the relationship immediately. It was more out of a guilty feeling that the lady decided to end her

life by self-immolation. The conduct attributed to A1 and A2 can never be said to be a deliberate, intentional, improper or unjustified conduct as was held in **Devassia v. State of Kerala** (2006(3) KLT 30) so as to infer that the accused driving her to commit suicide. It was her own unpardonable conduct which had worked upon her to eventually commit suicide. Under these circumstances, it will be adding insult to injury by driving the father and and son to the unnecessary ordeal of a trial. The court charge framed on 01.03.2009 and all further proceedings in C.C. No. 133/2004 on the file of Judicial First Class Magistrate, Ponnani are accordingly set aside and the petitioners are discharged of the offence punishable under Section 498 A r/w Section 34 IPC.

The Crl. R.P. is disposed of accordingly.

V. RAMKUMAR, JUDGE.

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